

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

U.S. DISTRICT COURT  
DISTRICT OF VERMONT  
FILED

2020 DEC 10 AM 10:19

MIRIAM LOWELL and SETH HEALEY, )  
)  
Plaintiffs, )  
)  
v. )  
)  
VERMONT DEPARTMENT OF )  
CHILDREN AND FAMILIES, (“DCF”); )  
KENNETH SCHATZ, *Commissioner, DCF*; )  
KAREN SHEA, *Deputy Commissioner for* )  
*the Family Services Division (“FSD”), DCF*; )  
CHRISTINE JOHNSON, *Deputy* )  
*Commissioner for FSD, DCF*, EMILY )  
CARRIER, *District Director, DCF*; )  
CATHERINE CLARK, *Director,* )  
*Commissioner’s Registry Review Unit, DCF*; )  
KATHLEEN SMITH, *Family Services* )  
*Supervisor, DCF*; CHRISTINE GADWAH, )  
*Family Services Worker, DCF*; KATHLEEN )  
GREENMUN, *Substantiation Hearing* )  
*Officer, DCF*; JOHN and JANE DOES 1–10, )  
)  
Defendants. )

CLERK  
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Case No. 5:19-cv-150

**ORDER ON STAY**

This case concerns a claim for declaratory relief challenging the procedures under which the Vermont Department of Children and Families (“DCF”) conducts administrative review hearings concerning substantiation of child abuse and placement on the Vermont child-abuse registry. These hearings are authorized by 33 V.S.A. § 4916a and are called “administrative review conferences.” In addition to the claim for declaratory relief, the complaint includes claims for money damages against DCF employees for alleged violations of Plaintiffs’ rights under the Constitution and federal disability law. (*See* Doc. 1.)

By order dated November 18, 2019, the court denied Plaintiffs' motion for a preliminary injunction preventing DCF from conducting an administrative review hearing in Plaintiffs' case. (Doc. 36.) Plaintiffs took an appeal. On June 4, 2020, while the appeal was pending, the court denied Plaintiffs' motion to stay the review hearing. (Doc. 48.) In the appeal before the Second Circuit, Plaintiffs similarly filed a motion to stay, requesting that the appellate court stay this court's June 4, 2020 order during the pendency of the appeal. The Second Circuit denied that motion in a one-page Motion Order on August 25, 2020. *Lowell v. Vt. Dep't of Children & Families*, No. 19-3987-cv (2d Cir. Aug. 25, 2020). The Second Circuit issued its decision on Plaintiffs' appeal on December 1, 2020. *Lowell v. Vt. Dep't of Children & Families*, No. 19-3987-cv, 2020 WL 7038598 (2d Cir. Dec. 1, 2020) (summary order). The DCF review hearing has not occurred.

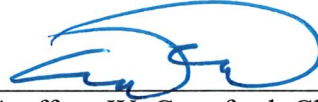
Due to the COVID emergency, DCF is conducting administrative review conferences only on a remote video basis. Section 4916a of Title 33 of the Vermont Statutes Annotated provides that the conferences shall be in person unless the individual whose conduct is at issue requests a teleconference. Plaintiffs have chosen an in-person hearing which will not be available until the COVID emergency is behind us all.

At a status conference on December 9, 2020, Plaintiffs' counsel sought permission to proceed with the money damages portion of the lawsuit. Defendants' counsel opposes the request. The court previously ordered that "[d]iscovery [on the damages claim] is stayed until the plaintiffs have completed the process of review before the DCF administrative reviewer and the [Human Services Board] review. A stay of discovery will permit the state process to go forward without interference." (Doc. 36 at 9.) This factor remains relevant today. The court extends the stay of discovery until the administrative review process is complete. As previously

ordered, there is no need to stay discovery during any judicial review by the Vermont Supreme Court because that review is on the record and does not require testimony or other evidence.

SO ORDERED.

Dated at Rutland, in the District of Vermont, this 10th day of December, 2020.



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Geoffrey W. Crawford, Chief Judge  
United States District Court